

**ORIGINAL**

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

In the Matter of SBC Communications Inc. - )  
 Ownership of Certain Advanced Services Equipment )  
 Under the SBC-Ameritech Merger Conditions )

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 CC Docket No. 99-49  
 ASD File No. 99-49

**COMMENTS OF MCI WORLDCOM, INC.**

Pursuant to the Public Notice released on February 18, 2000 (DA 00-335), MCI WORLDCOM, Inc. ("MCI WorldCom") hereby submits comments concerning the requests of SBC Communications Inc. ("SBC") concerning ownership of certain advanced services equipment under the conditions imposed by the Commission's order authorizing SBC's merger with Ameritech.<sup>1</sup>

MCI WorldCom has participated in industry meetings with SBC concerning its proposal and has suggested alternative approaches that meet the needs of SBC and all affected competitive local exchange carriers ("CLECs"). MCI WorldCom looks forward to continuing these discussions. Unless and until SBC obtains a modification of the *SBC-Ameritech Order*, the merger conditions to which it agreed require SBC's advanced services affiliates own combination plugs/cards ("ADSL cards") in remote terminals ("RTs") and optical concentration devices ("OCDs"). On the current record before the Commission, SBC has not carried its burden to justify a modification with respect to ADSL cards in RTs. To provide guidance for the on-going industry discussions, the Commission should take this opportunity to reaffirm that SBC must

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<sup>1</sup> Letter dated Feb. 15, 2000, from Paul K. Mancini, SBC, to Lawrence E. Strickling, Chief, Common Carrier Bureau ("SBC Letter"); see *Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines*, 14 FCC Rcd 14712 (1999) ("SBC-Ameritech Order").

provide competitive local exchange carriers (“CLECs”) access to RTs on reasonable and nondiscriminatory terms and at cost-based rates. Any modification for OCDs should be conditioned on requirements that (1) unbundled network elements (“UNEs”) are provisioned and priced the same whether an SBC incumbent local exchange carrier (“ILEC”) or an advanced services affiliate owns the underlying equipment, and (2) SBC allows CLECs to collocate equipment that exclusively or partly performs switching functions.

#### **I. STANDARD FOR MODIFICATION OF COMMISSION ORDERS**

Section 416(b) of the Communications Act, 47 U.S.C. § 416(b), expressly authorizes the Commission “to suspend or modify its orders upon such notice and in such manner as it shall deem proper . . . [e]xcept as otherwise provided in this Act,” and nothing in the Act provides otherwise with respect to the Merger Conditions. *Cf.* 47 C.F.R. § 1.3 (Commission rules may be amended or waived for good cause shown). The Merger Conditions themselves contemplate modification or waiver. *E.g.*, Merger Conditions ¶¶ 69, 70, 72 (App. C to *SBC-Ameritech Order*). When SBC seeks a modification (or waiver) of the Merger Conditions, it has the burden to establish that the modification (like modification of any Commission order) furthers the public interest. To justify a modification, SBC must prove that it would be consistent with the procompetitive purposes of the Merger Conditions and the Communications Act, particularly the local competition requirements of section 251. When a modification is opposed by any party to this proceeding, SBC ordinarily has to demonstrate it is necessitated by a change in circumstances that is unforeseen and unforeseeable. *Cf. Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367 (1992) (standards for modification of judicial consent decree).

SBC may not avoid the standard for a contested modification by labeling it an indefinite extension. Because an extension of a deadline for compliance under paragraph 72 of the Merger

Conditions is a modification of a condition, the same standard applies to requests for extensions of time, and an indefinite extension is the functional equivalent of eliminating a condition with which SBC would otherwise have to comply.

## **II. OWNERSHIP OF ADSL CARDS IN REMOTE TERMINALS**

On the current record, SBC has not carried its burden of proof for modification of the separate affiliate requirements to permit SBC ILECs to own ADSL cards in RTs.

As a threshold matter, the Commission should reject SBC's contention that no modification is necessary because ADSL cards are not "Advanced Services Equipment" within the meaning of paragraph 3.d of the Merger Conditions. Paragraph 3.d defines such Equipment to include "facilities or network equipment used specifically to provide Advanced Services," and requires an affiliate to own and operate "all new Advanced Services Equipment . . . used to provide Advanced Services . . . put into service by SBC/Ameritech later than 30 days after the Merger Closing Date." SBC does not dispute that the ADSL cards will be put into service later than 30 days after the closing last October. ADSL cards can reasonably be categorized only as Advanced Services Equipment. Although paragraph 3.d specifies that two types of Advanced Services Equipment must be used "solely" or "only" in the provision of advanced services, this provision does not use either of these qualifiers with respect to three other types of such Equipment, explicitly including DSLAMs, and SBC acknowledges that an ADSL card "provides the same functionality as a DSLAM in that it splits the voice and data signal." SBC Letter 3. SBC is installing these ADSL cards in RTs only to support advanced services. Some ADSL cards will not immediately be used for advanced services at the time they are installed, because it is more efficient for SBC to install multiple ADSL cards sufficient to meet all anticipated demand in the neighborhood at the time it upgrades an RT, rather than repeatedly send a technician to the

RT every time another individual customer in the neighborhood decides to subscribe to an advanced service. But this timing issue does not mean that ADSL cards are not Advanced Services Equipment within the meaning of paragraph 3.d. Just as DSLAMs are classified as Advanced Services Equipment even though voice as well as data traffic flows through them, so too are ADSL cards that provide the same functionality.

SBC has not shown that the modification of the Merger Conditions it seeks to permit its ILECs to own this advanced service equipment is necessary at this time and on this record, especially in light of the continuing industry discussions. SBC cannot claim any unforeseen changed circumstances. SBC announced its Project Pronto on October 18, 1999 — less than two weeks after the Commission released its order authorizing SBC's merger with Ameritech.<sup>2</sup> SBC could hardly be surprised that affording CLECs nondiscriminatory access on the same basis as its advanced services affiliates to the thousands of remote terminals it plans to modify to support Project Pronto would involve implementation issues that need to be resolved.

Granting SBC the relief it seeks could substantially undermine the fundamental objective of the condition requiring SBC to provide advanced services only through a separate affiliate. The Commission concluded that “[e]stablishing an advanced services separate affiliate will provide a structural mechanism to ensure that competing providers of advanced services receive effective, nondiscriminatory access” and “will greatly accelerate competition in the advanced services market.” *SBC-Ameritech Order* ¶ 363. The Commission noted that this condition will help CLECs achieve nondiscriminatory access with respect to collocation. *Id.* n.674. If SBC obtains this modification, its advanced services affiliates will apparently not have to collocate at all

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<sup>2</sup> See “SBC Becomes America’s Largest Single Broadband Provider With \$6 Billion Initiative” (“Project Pronto Press Release”) (available at <[http://www.sbc.com/technology/data\\_strategy/project\\_pronto/home.html](http://www.sbc.com/technology/data_strategy/project_pronto/home.html)>).

in any RT, so CLECs will not be able to get the benefit of any collocation agreement that the advanced services affiliates would otherwise negotiate with SBC ILECs.

Nondiscriminatory access to the RT, and associated subloop unbundling and line sharing, will be critical to the plans of CLECs to provide advanced services because SBC's entire advanced services strategy (according its Project Pronto Press Release) is to "[r]earchitect its network to push fiber deeper into the neighborhoods it serves and accelerate the convergence of its voice and data backbone systems." By enabling its advanced services affiliates to avoid collocating in RTs and blurring the line between its ILEC and advanced services operations, SBC could diminish the benefits of the separate affiliate requirement with respect to collocation in RTs, subloop unbundling, and line sharing. It is no answer for SBC to assert that it will provide nondiscriminatory access even if the separate affiliate requirement does not apply, because the Commission imposed this requirement precisely because it makes it easier for CLECs and regulators to detect discrimination and to enforce nondiscrimination.

The basic design of Project Pronto illustrates the difficulty of achieving nondiscrimination, and the cost of diluting nondiscrimination safeguards. SBC is modifying its local network to support only the types of advanced services that it wishes to provide, using only the brands of equipment it selects, and deploying the new infrastructure only where and when it chooses. It takes no imagination to predict SBC's response if an unaffiliated CLEC would ask SBC to redesign its network to permit the CLEC to provide a different type of advanced service using a different architecture or different equipment in different areas on a different schedule. Yet SBC is accommodating the business plan of its supposedly "separate" advanced services affiliates in ways of which unaffiliated CLECs could never dream. The Commission imposed the separate affiliate requirement to facilitate the ability of competing providers of advanced services to get the same

opportunities from SBC ILECs as SBC gives itself. The requested modification could substantially weaken this capability just as SBC is beginning to modify its monopoly local networks to support its advanced services.

SBC claims that complying with the merger condition by giving unaffiliated CLECs the same opportunity to collocate advanced services equipment in RTs that SBC intends to give itself would create significant administrative difficulties. SBC Letter 3. But SBC's description of the alleged problems is general and conclusory, without any attempt to specify the "administrative, tax and inventory receipt and control issues." These challenges are inherent in any nondiscriminatory collocation arrangement and in provision of unbundled access to multiple CLECs. It is reasonable to expect that these issues will take more effort to resolve in the case of RTs than, for example, with caged collocations. However, the current record does not support a finding by the Commission that the task is unmanageable for RTs.

To provide guidance in the on-going discussions, the Commission should reaffirm that SBC must provide access to RTs on reasonable and nondiscriminatory terms and at cost-based rates. SBC must give unaffiliated CLECs the same opportunity to pursue their advanced services strategies that it gives itself to pursue its strategy, with its advanced services affiliates and ILECs essentially functioning as one. In addition, and with or without the requested modification, SBC should charge CLECs the forward-looking cost of access, both for advanced services equipment that must be unbundled under the UNE Remand Order and for ILEC equipment used in conjunction with advanced services equipment (such as the ILEC equipment into which ADSL cards are placed regardless of whether an SBC ILEC or affiliate owns the ADSL cards). Moreover, SBC's pricing of unbundled access should reflect the efficiencies it claims for its new network architec-

ture. According to SBC's Project Pronto Press Release, expense and capital savings alone will offset the cost of upgrading SBC's local networks, so that Project Pronto will pay for itself.

### **III. OWNERSHIP OF OCDs**

MCI WorldCom does not object in principle to SBC ILECs owning OCDs. As SBC states, these OCDs will be used to support the provision of certain advanced services UNEs to CLECs. It may facilitate the provisioning, and cost-based pricing, of these UNEs if SBC ILECs own the OCDs. However, any modification to permit SBC ILECs to own OCDs should be subject to two conditions.

*First*, the Commission should affirm that whenever SBC uses any advanced service equipment to provide a UNE to CLECs, the UNE should be provisioned and priced as if the ILEC owns the underlying equipment. This means that CLECs should be able to use the same processes to purchase UNEs whether an advanced services affiliate or an ILEC owns the advanced services equipment, and that CLECs should pay the same price for a UNE whether an ILEC or the advanced services affiliate owns the advanced services equipment (ADSL cards in RTs as well as OCDs).

*Second*, SBC was prepared to allow its advanced services affiliates to collocate OCDs in ILEC central offices even though "[t]he OCD is technically an ATM switch." SBC Letter 5. As the Commission knows, SBC and other ILECs have generally resisted allowing CLECs to collocate equipment that has any switching functionality. But when it serves SBC's own businesses purposes, SBC has no hesitation whatsoever about allowing its advanced services affiliates, which are supposed to operate at arm's length from affiliated ILECs, to collocate pure switching equipment in ILEC central offices. The Commission should make clear that the fundamental principle of nondiscrimination embodied in the Merger Conditions means that (1)

SBC must allow CLECs to collocate switching equipment in ILEC central offices, just as it was prepared to allow advanced services affiliates to collocate switching equipment, and that (2) SBC must allow CLECs to do so whether or not the equipment performs interconnection as well as switching functions.

### **CONCLUSION**

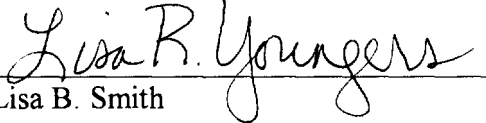
The Commission should evaluate SBC's requests in light of the factors set forth above.

Respectfully submitted,

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Dated: March 3, 2000



## CERTIFICATE OF SERVICE

I, Lonzena Rogers, do hereby certify, that on this third day of March, 2000, I caused to be delivered by hand, a true and correct copy of MCI WorldCom, Inc.'s Comments in the matter of SBC's Request For Interpretation, Wavier, or Modification of the SBC/Ameritech Merger Conditions to be served on the following:


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